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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,280	01/04/2002	Jay A. Murdock	LEAR 0960 R	6835

7590

10/17/2002

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EXAMINER

PEDDER, DENNIS H

ART UNIT

PAPER NUMBER

3612

DATE MAILED: 10/17/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

SK

Office Action Summary

Application No.
10/037,280

Applicant(s)
Murdock et al.

Examiner
Dennis H. Pedder

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3612



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jan 4, 2002
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 4 6) ☐ Other:

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DETAILED ACTION

Reissue Applications

1. Applicant is reminded of the continuing obligation under 37 CFR 1.178(b), to timely apprise the Office of any prior or concurrent proceeding in which Patent No. 6,010,174 is or was involved. These proceedings would include interferences, reissues, reexaminations, and litigation.

Applicant is further reminded of the continuing obligation under 37 CFR 1.56, to timely apprise the Office of any information which is material to patentability of the claims under consideration in this reissue application.

These obligations rest with each individual associated with the filing and prosecution of this application for reissue. See also MPEP §§ 1404, 1442.01 and 1442.04.

2. The reissue oath/declaration filed with this application is defective (see 37 CFR 1.175 and MPEP § 1414) because of the following:

The declaration does not state that the inventors are joint inventors of the invention as required by 37 CFR 1.63(a)(4).

The declaration does not state that the inventors are the original **and first** inventors of the subject matter which is claimed and for which a patent is sought as required by 37 CFR 1.63(b)(2).

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The declaration does not state that "all errors being corrected in the reissue application up to the time of the filing of the declaration arose without any deceptive intention on the part of the applicant" 37 CFR 1.175 (a)(2) or language equivalent thereto.

3. Claims 1-31 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the declaration is set forth in the discussion above in this Office action.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 3, 7, 9, 11, 13-14, 16-28, 30-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 lacks a clear frame of reference for the term "vertical". These walls 96,98 are only vertical when the surface claimed is horizontally positioned.

Claim 7 is vague. Movement **related to** other movement does not particularly point out and distinctly claim the invention. How is the movement related?

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Claim 9 is vague. The guide is disclosed as H-shaped. Referring to a portion of the H-shape as U-shaped is confusing and does not particularly point out as required by statute. See also claim 20.

Claim 11 is not understood. No ridge is defined in this application. *2nd* ?

Claim 13 is incorrect. The contact is with the projection 86, not the pivotal attachment 90.

Claim 14 is vague. How is the visor body associated with and proximate to the second pivotal attachment. Rather, it appears that applicant intended --a portion of the visor body--. See also claim 26.

Claim 16 is vague and confusing in "Maintaining a rotational position of said second pivotal attachment with respect to the rod related to a rotation position of said first pivotal attachment with respect to the rod". How is it related?

Claim 18 is also vague and confusing in "related to".

Claims 30 and 31 are vague in "non-sliding". No frame of reference is given for such a negative limitation. For example, it is non-sliding with respect to the rod, the rail, or the sliding member?

The claims should be thoroughly checked for these types of problems, the responsibility of the applicant.

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RECAPTURE

6. Claims 5-31 are rejected under 35 U.S.C. 251 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based. See *Hester Industries, Inc. v. Stein, Inc.*, 142 F.3d 1472, 46 USPQ2d 1641 (Fed. Cir. 1998); *In re Clement*, 131 F.3d 1464, 45 USPQ2d 1161 (Fed. Cir. 1997); *Ball Corp. v. United States*, 729 F.2d 1429, 1436, 221 USPQ 289, 295 (Fed. Cir. 1984). A broadening aspect is present in the reissue which was not present in the application for patent. The record of the application for the patent shows that the broadening aspect (in the reissue) relates to subject matter that applicant previously surrendered during the prosecution of the application. Accordingly, the narrow scope of the claims in the patent was not an error within the meaning of 35 U.S.C. 251, and the broader scope surrendered in the application for the patent cannot be recaptured by the filing of the present reissue application.

Examination of the parent file for this reissue application reveals that applicant secured patented claim 1 by incorporating the subject matter of original claim 2 into original claim 1, patented claim 3 by incorporating the subject matter of original claim 3 into original claim 1, and patented claim 4 by incorporating the subject matter of original claim 4 into original claim 1. As applicant is undoubtedly aware, the subject matter of claim 2 is an H-shaped guide, that of claim 3 is first and second spaced vertical walls, a parallel horizontal wall therebetween and a passage slot in the latter, and that of claim 4 is first and second parallel legs coupled to the torque control, a

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cross bar, the second leg in the passage, and the cross bar in the slot. This is not a definitive listing, but a summary of the subject matter surrendered in order to obtain a patent. Since this subject matter is not present in the above claims, these claims are defective under 35 USC 251.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

8. Claim 4 is rejected under 35 U.S.C. 102(e) as being anticipated by Crotty, III, US 5,823,603.

Crotty, III has rod assembly 56, torque control attached at 64, guide fixed to surfaces of the torque control depending therebelow, visor body 36, track 92, substantially enclosed passage

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between 94,96 and receiving a portion 106 of the guide in sliding engagement, the guide having first leg and second leg depending vertically downwardly directly below rod guides 66, respectively, and cross bar 106 joining the first and second legs with the legs spaced and parallel and received within the passage and the cross bar received in the slot of the track.

9. (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 5-8, 12, 15-19, 21, 26-27, 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Snyder et al., US 5,409,285.

Snyder et al. has rod 34, torque control 50, guide 70, visor body 22, structure 28 slidable on rod, and track or rail 60, 62 slidable relative to the guide.

As to claim 7, when 28 slides, track moves relative to the guide.

As to claim 15, see structure 64, 66.

As to claim 16, the pivot attachments at 52, 28 are coaxial and the distance between varies while the attachments pivot simultaneously.

As to claim 27, the visor body at 66 is proximate to the second attachment at 28 in the position of figure 5.

As to claim 30, the sliding member 28 is part of the visor body, and the visor body is slidably engaged to the non-sliding member 50.

11. Claims 5-8, 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Abu-Shumays et al..

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Abu-Shumays et al. has rod 4, torque control 2, guide depending downwardly from member 2, structure 3, and track 5/6.

As to claim 30, the member 2 does not slide longitudinally and sliding member 1/5/6 engages 2 slidably.

12. Claim 29 is rejected under 35 U.S.C. 102(b) as being anticipated by Clark, US 4,925,233.

Clark has rod 30, torque control 50, guide legs 54/56, second pivotal attachment at 81 coaxial with the rod, track in channel 90 engaging legs 54/56, and allowing separation of the pivotal attachments and rotational positions.

Information Disclosure Statement

13. The information disclosure statement filed 3/25/2002 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56© most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the foreign patent information referred to therein has not been considered.

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Specification

14. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: ridge, claim 11, rail, claim 8, and contacting an elbow, claim 14.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Pedder whose telephone number is (703)308-2178. Fax amendments to expedite handling should be sent to (703) 305-7687.

DHP

October 2, 2002


Dennis H. Pedder
Primary Examiner
Art Unit 3612
10/2/02